

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARVIN STEWART,)
)
Petitioner,)
)
v.) Case No. 4:03CV00828 CDP/AGF
)
DAVID DORMIRE,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on Petitioner's motion to stay federal habeas proceeding to allow Petitioner to exhaust his state remedies. Petitioner represents that Respondent agrees that the action should be stayed, and that Respondent thus does not oppose the present motion. Upon review of the record, the Court agrees that this case should be stayed in light of the fact that there is good cause to believe that Petitioner's state post-conviction motion was never actually denied by the state trial court, and that thus Petitioner's habeas petition contains unexhausted claims. Further, the Court believes that there was "good cause" for Petitioner's failure to exhaust, and that Petitioner's claim that trial counsel was ineffective for failing to call Phillip Dotson as a witness is not "plainly meritless." Thus a stay, rather than dismissal, of habeas proceedings is warranted. See Rhines v. Weber, 544 U.S. 269, 274-76 (2005) (holding that a federal habeas court has the discretion to stay, rather than dismiss, a federal habeas action to

allow the petitioner to exhaust his state remedies, where there was good cause for the petitioner's failure to exhaust and the claim is not plainly meritless).

Accordingly,

IT IS HEREBY ORDERED that the unopposed motion for a stay is **GRANTED**.

[Doc. #27]

IT IS FURTHER ORDERED that the parties shall advise the Court of the status of Petitioner's case promptly upon the final disposition in the state courts.


AUDREY G. FLEISSIG
UNITED STATES MAGISTRATE JUDGE

Dated this 14th day of August, 2006.